IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN. APPLICATION NO.296 OF 2006

Sunita Shivbhajan Pasi .. ..Applicant

Versus

Ramesh Premnath Chaubey & Ors. .. ..Respondents

Mr. P.B. Patil for applicant

Mr. Rajesh More, APP for State

Mr. Akhilesh Singh for respondent nos.1 to 4

CORAM : S.C.DHARMADHIKARI,J.

DATE : 20TH NOVEMBER, 2006

P.C.:

1. The order under challenge was passed on an application made by the original accused for calling records and proceedings in Case No.505/PW/2004 pending before the Addl. Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai for trial together with Sessions Case No.713 of 2005.

2. The learned Addl. Sessions Judge has passed an order on this application on 6.2.2006. The learned Judge instead of deciding whether the application was maintainable and if it is so, is it necessary to call for the records in the case pending before the Metropolitan Magistrate, proceeded to alter the charge from Section 307 IPC to 326 IPC. The net result of all this is Sessions Case itself was held to be not maintainable and converted into a case triable by the Metropolitan Magistrate. The sessions case was remanded to the Metropolitan Court for trial along with Case No.505/PW/2004.

3. When these aspects were brought to the notice of the learned counsel appearing for the original accused even he found it difficulty to support the impugned order. The learned APP supported the applicant original complainant.

4. Without going into any larger controversy and in the light of the consent given by both sides the impugned order is quashed and set aside. The application Exh.12 is restored to the file of the Sessions Court, Greater Mumbai. The learned Addl. Sessions Judge to whom the

said application and the Sessions Case is assigned shall consider it afresh on merits and in accordance with law. He shall deliver his decision thereon as expeditiously as possible and in any event within a period of six months from the date of receipt of copy of this Order. All contentions of both sides are kept open. The revision application is allowed in the above terms.

5. The learned judge to whom the case is assigned shall not be influenced by any observations in the order dated 6.2.2006 which is set aside by this court. He shall decide the application Exh.12 uninfluenced by the same and strictly in accordance with law.

(S.C.Dharmadhikari, J.)